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11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

13 In re

14 COLDWATER DEVELOPMENT, LLC,

15
16 Debtor.

Case No. 2:21-bk-10335-BB

Chapter 11

Jointly Administered With:
Case No. 2:21-bk-10336-BB

**GIVE BACK LLC'S RESPONSE TO
CHAPTER 11 TRUSTEE'S MOTION TO
(I) APPROVE AUCTION AND BID
PROCEDURES REGARDING THE SALE
OF REAL PROPERTY; AND (II) SET
SCHEDULING FOR A MOTION TO
APPROVE THE SALE OF REAL
PROPERTY**

DATE: March 2, 2022

TIME: 10:00 a.m.

PLACE: Courtroom "1539"

21
22
23
24 In re

25 LYDDA LUD, LLC,

26
27 Debtor.

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- ☒ Affects Both Debtors
☐ Affects Coldwater Development, LLC only
☐ Affects Lydda Lud, LLC only

Give Back, LLC ("Give Back") hereby submits "Give Back LLC's Response to Chapter 11 Trustee's Motion to (I) Approve Auction and Bid Procedures Regarding the Sale of Real Property; and (II) Set Scheduling for a Motion to Approve the Sale of Real Property" (the "Response"), in response to the "Chapter 11 Trustee's Notice of Motion and Motion to (I) Approve Auction and Bid Procedures Regarding the Sale of Real Property; and (II) Set Scheduling for a Motion to Approve the Sale of Real Property; Memorandum of Points and Authorities and Declarations of Sam S. Leslie and David Seror in Support Thereof" (the "Motion"), filed by Sam S. Leslie (the "Trustee"), the duly appointed, qualified, and acting chapter 11 trustee for the estates of the jointly administered debtors Coldwater Development, LLC ("Coldwater") and Lydda Lud, LLC ("Lydda" and together with Coldwater, the "Debtors"), and represents as follows:

I.

PREFATORY STATEMENT

Give Back appreciates the time and effort the Trustee has put into attempting to market the Debtors' six lots, however, these cases have run their course - either the six lots should be sold for an amount necessary to pay Give Back's allowed claim, in full, or relief from stay must finally be granted. Just since these cases were filed in January 2021, millions of dollars of interest have accrued on Give Back's debt while, at the same time, Give Back has incurred untold attorneys' fees protecting its collateral and preventing Mohamed Hadid from using straw buyers to perpetrate a fraud on this Court. Only after evidence of Hadid's outright theft of estate property was brought to the Court's attention was a real fiduciary finally placed in charge.

1 Now, after more than a year in chapter 11, the Trustee is on the precipice of
2 either finding a qualified bidder or conceding that the lots do not have the highly inflated
3 value that the Debtors have always proclaimed. The reality is, unless there is a qualified
4 bidder, the scales now need to tip in favor of the lender. This is even more crucial since,
5 for the first time since this Court ordered adequate protection payments to guard against
6 the accrual of property taxes and fees on past due property taxes, the Debtors and Hadid
7 have failed to deposit the funds into Give Back's account. This has now created another
8 sense of urgency as Give Back, in accordance with the Court's prior orders, can
9 immediately move for relief from stay since it is now getting primed by the County of Los
10 Angeles.

11 So while the Trustee pursues an expedited sale to non-tainted third-parties,
12 Give Back only consents to a sale free and clear of its undisputed first priority lien to the
13 extent the sales proceeds are in an amount sufficient to pay the total amount of its
14 allowed secured claim as of the expected closing date, which has increased markedly
15 since the date its proof of claim was filed. In addition, a reserve of \$350,000 over the
16 amount of Give Back's claim must be established to cover the anticipated attorneys' fees
17 and accrued interest that Give Back will incur if any portion of its claim is disputed.

18 If, however, this Court cannot ensure that a sale to a third party bidder was
19 the result of a transparent, non-collusive bidding process, it should not allow the sale to
20 proceed at all. The Court already was witness to one failed bid for the Coldwater lots,
21 which Give Back demonstrated was rife with fraud, direct lies to the Court, and concealed
22 facts. In order to mitigate against the submission of any further fraudulent bids, the
23 bidding procedures should require that the Trustee produce certain documents and
24 discovery relative to any potential bidder prior to the sale. If those documents are not
25 produced and Give Back cannot conduct an independent investigation into any potential
26 buyer, Give Back reserves the right to object to the sale.

27 And, to reiterate, since Give Back's single deed of trust covers all six lots, if
28 the Trustee only elicits offers for a portion of the six lots, Give Back only consents to a

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1 sale to the extent the aggregate purchase price exceeds the amount of its allowed
2 secured claim, which is estimated to be well in excess of \$33,000,000 as of a proposed
3 April or May closing date.¹ However, without Give Back's express consent, there is no
4 avenue for the Trustee to obtain approval of a sale free and clear of Give Back's lien
5 under 11 U.S.C. § 363(f), unless the sales price obtained exceeds not only the amount
6 Give Back contends it is owed, but exceeds the aggregate amount of *all* claims held by
7 creditors who hold a lien or security interest in the lots, including senior tax liens.

8 Importantly, any credit bid (which the Trustee acknowledges can be made
9 pursuant to 11 U.S.C. § 363(k)) cannot and should not be interpreted as Give Back's
10 implied consent to an auction process that would result in a sales price to a third party in
11 an amount less than the full amount of Give Back's claim. See In re Arch Hospitality,
12 Inc., 530 B.R. 588, 591 (Bankr. W.D.N.Y. 2015) ("Consent and failure to object are not
13 synonymous."); In re DeCelis, 349 B.R. 465, 468-69 (Bankr. E.D. Va. 2006) (co-owner's
14 silence and failure to object to a sale free and clear of his interest of real estate held with
15 debtor as tenant in common was not consent to the sale); In re Roberts, 249 B.R. 152
16 (Bankr. W.D. Mich. 2000) (language of Section 363(f)(2) supports requirement of express
17 consent; express consent cannot be implied as there may be another reason for failure to
18 object).

19 In addition, Section 363(f)(3) restricts the Trustee's efforts to argue that the
20 Court can approve a sale price which is less than the amount of Give Back's claim. As
21 such, even though the Trustee has, for the moment, agreed that the amount of Give
22 Back's undisputed claim for purposes of its credit bid is \$27,265,211.02, it is clear that, in
23 this Circuit, the price requirement under Section 363(f)(3) means that the amount to be
24 received from the sale must exceed the face amount due on account of all encumbrances
25

26
27 ¹ Give Back will endeavor to provide the Trustee with a more up to date estimate of its secured claim. In
28 fact, shortly after his appointment, Give Back provided the Trustee a detailed statement evidencing its
claim and Give Back has been completely cooperative with the Trustee and his counsel.

1 on the property to be sold. Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391
2 B.R. 25 (B.A.P. 9th Cir. 2008) (“... we join those courts cited above that hold that §
3 363(f)(3) does not authorize the sale free and clear of a lienholder’s interest if the price of
4 the estate property is equal to or less than the aggregate amount of all claims held by
5 creditors who hold a lien or security interest in the property being sold.”). See also In re
6 WDH Howell, LLC, 298 B.R. 527 (D.N.J. 2003) (reversing bankruptcy court order allowing
7 debtors in possession to sell environmentally contaminated property for less than
8 aggregate amount due on account of mortgage claim as Section 363(f)(3) requires that
9 the sale price must exceed the face amount of claims secured by liens on the property);
10 In re Perroncello, 170 B.R. 189 (Bankr. D. Mass. 1994) (value, for purposes of Section §
11 363(f)(3), means face value, rather than fair market value, of lien claim, and court denied
12 debtor’s motion to sell free and clear where sale price was less than total claims against
13 property).

14 Although a secured creditor can voluntarily agree to reduce the amount
15 owed on account of its lien on property being sold free and clear, or enter into an
16 agreement to carve-out monies from sale proceeds in favor of the estate, thus mooted
17 the issue of whether the price exceeds the lien amount, Give Back has not extended
18 these accommodations to the Trustee. Thus, absent a sale price in excess of the
19 allowed amount of Give Back’s claim, as of the date of an expected closing, the Trustee
20 has no ability to, in essence, “cram-down” a sale over Give Back’s objection by forcing it
21 to accept only the “undisputed” amount of its lien. In other words, the value of Give
22 Back’s collateral determined by bids tendered at an auction has no bearing on the
23 measure of Give Back’s allowed claim for purposes of a Section 363(f) sale.

24 In an effort to resolve this lingering issue, Give Back repeatedly requested
25 that the Debtors support their objection to nearly \$6,000,000 of its claim, but no
26
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28

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1 substantive response was ever received.² The Trustee also has not provided Give Back
2 with any support justifying his reliance on the Debtors' disputed claim number. Thus, the
3 ongoing assertion that the undisputed amount of Give Back's claim is \$27,265,211.02
4 simply is untenable. The Debtors' calculations were based on an unsupported and
5 flawed interpretation of certain of the underlying loan documents, specifically the Note
6 and Forbearance Agreement.

7 If the amount of Give Back's claim is not resolved prior to any auction, Give
8 Back reserve all rights, and is not waiving any objections once an actual sale motion is
9 filed to confirm a buyer or buyers. Therefore, if the Court permits an out-of-court auction
10 to proceed, it should only do so with the express understanding that a sale can be
11 approved only if the net sale price, exclusive of taxes, fees, commissions, and other
12 charges, exceeds the amount of Give Back's claim as calculated by Give Back, not the
13 Trustee or the Debtors, putting aside whether the sale price must also be in an amount
14 sufficient to satisfy the numerous other liens of record. In other words, if the bidding
15 stops at any dollar amount which is short of Give Back's allowed claim, and Give Back
16 does not consent, the Court cannot approve the sale under any circumstances, and Give
17 Back must then be granted relief from stay.³

20 ² As noted, Give Back will endeavor to provide a more complete statement of its claim amount by the
21 hearing date. Give Back reserves all rights to oppose any claim objection with all relevant evidence and
22 argument and reserves the right to assert any and all other amounts that may due and owing under the
Loan Documents.

23 ³ Give Back continues to assert that unless the sales price exceeds the aggregate face value of all liens of
24 record pursuant to Section 363(f)(3), this Court cannot approve a sale of all or a portion of the six lots free
25 and clear of Give Back's lien. As noted, Give Back is not consenting to a sale pursuant to Section 363(f)(2)
26 unless the full amount of its claim is paid, in full. In addition, (i) to date, the Trustee has not (and cannot)
27 assert that the six lots can be sold free and clear of Give Back's lien under applicable non-bankruptcy law
pursuant to Section 363(f)(1), (ii) to date, the Trustee has failed to make even the most basic evidentiary
showing demonstrating that there is a bona fide dispute as to the validity of Give Back's lien as required by
Section 363(f)(4), and (iii) there simply is no identifiable legal or equitable proceeding under California law
under which Give Back could be compelled to accept a money satisfaction of its interest in the lots as
would be required by Section 363(f)(5). As such, Give Back reserves all rights with respect to the foregoing
and will address these issues, if necessary, when the Trustee files his motion to confirm the sale or sales.

1 In addition, since a sale predicated on Give Back's consent can only occur
2 if the eventual sale price exceeds the amount of Give Back's lien, the provisions of 11
3 U.S.C. § 506(b) dictate that Give Back is entitled to post-petition interest, fees, and costs.
4 Section 506(b) specifically provides that:

5 To the extent that an allowed secured claim is secured by
6 property the value of which, after any recovery under
7 subsection (c) of this section, is greater than the amount of
8 such claim, there shall be allowed to the holder of such
9 claim, interest on such claim, and any reasonable fees,
10 costs, or charges provided for under the agreement or State
11 statute under which such claim arose.

12 11 U.S.C. § 506(b).

13 In general, Section 506(b) provides for the allowance of fees (including
14 attorney's fees), costs and charges provided that (i) the claim is an allowed, secured
15 claim; (ii) the creditor holding the claim is oversecured; (iii) the fees, costs, and charges
16 are provided for by the agreement, or state statute, under which the creditor's claim
17 arose; and (iv) the fees, costs, and charges are reasonable. See Eastman Nat'l Bank v.
18 Sun 'N Fun Waterpark LLC (In re Sun 'N Fun Waterpark LLC), 408 B.R. 361, 366 (B.A.P.
19 10th Cir. 2009); In re SNTL Corp., 380 B.R. 204 (B.A.P. 9th Cir. 2007); In re Karmai, 316
20 B.R. 544 (B.A.P. 9th Cir. 2004); In re Alpine Group, Inc., 151 B.R. 931 (B.A.P. 9th Cir.
21 1993).

22 Here, the Trustee seeks approval to sell all or a portion of the six lots for an
23 as of yet undetermined amount, subject to any potential overbids over the initial
24 designated highest bids. Assuming the ultimate sale price exceeds the aggregate
25 amount of all liens of record, but, at a minimum, the senior tax liens and the allowed
26 amount of Give Back's claim, plus any other additional fees, interest, or charges properly
27 allowed, which it must in order for the Trustee to satisfy the requirements of Section
28

363(f), Give Back is oversecured and entitled to the payment of its post-petition interest, fees, and costs.

Thus, in the event Give Back is forced to litigate the amount of its claim or a portion thereof with the Trustee, those fees and costs are recoverable under Section 506(b). So too is the post-petition interest incurred on the unpaid disputed portion of Give Back's claims. Therefore, if the Trustee elects to dispute a portion of Give Back's claim, Give Back requests that the Court order the Trustee to hold back in escrow an amount equal to the disputed amount, plus an additional \$300,000 to cover any incremental post-petition interest, attorneys' fees, and costs incurred by Give Back. As further adequate protection, Give Back requests that the sale order expressly provide that Give Back's lien will continue to attach to the net sales proceeds in the event any portion of its claim is not paid on closing.

With respect to the actual bidding procedures, Give Back urges the Court to follow the bidding procedures Give Back agreed to with Debtors last year. As applied to this auction process, those bidding terms would be as follows:

- Give Back retains its statutory right to credit bid under 11 U.S.C. § 363(k). In the event Give Back elects to invoke its statutory right to credit bid, its bid shall be comprised of an amount up to \$29,265,211.02, which represents the undisputed amount of its secured claim, plus any additional amount which Give Back adds to the amount of its bid.⁴

- In the event Give Back is the successful bidder in an amount greater than \$29,265,211.02, the cash component of Give Back's bid shall be placed in a segregated DIP or trustee account pending further order of the Bankruptcy Court and subject to all liens, judgments, and encumbrances valid and existing upon sale closing.

⁴ This amount is \$2,000,000 higher than the minimum amount agreed to by the Debtors and Give Back last year, since that "undisputed" amount was predicated on an August 31, 2021, closing date. Since that time, as expected, at least an additional \$2,000,000 in interest and other fees has accrued on the debt.

- 1 • Give Back shall be entitled to invoke its statutory right to credit bid
2 under 11 U.S.C. § 363(k) at the time of the auction.
- 3 • Give Back shall be deemed a qualified bidder and will not be
4 required to deliver a bid deposit in order to participate in the auction as a qualified bidder.
- 5 • Give Back has no objection to a \$250,000 registration fee, however,
6 the bidding procedures should be modified to provide that any party qualified to bid must
7 increase its initial bid deposit to the total amount of \$2,000,000 no later than seven (7)
8 calendar days prior to the auction.⁵
- 9 • Consistent with Give Back's earlier points, the bidding procedures
10 and any solicitation package must disclose that Give Back alleges that its secured claim
11 exceeds \$33,000,000.⁶
- 12 • Consistent with Give Back's earlier points, the bidding procedures
13 and any solicitation package must disclose that any party submitting a bid for less than all
14 or all six lots in an amount that is less than the full amount of Give Back's alleged
15 secured claim may not actually obtain title unless Give Back consents.
- 16 • Consistent with Give Back's earlier points, the bidding procedures
17 and any solicitation package must disclose that the Trustee will hold back in escrow(s) an
18 amount equal to the disputed amount of Give Back's claim, plus an additional \$300,000
19 to cover any incremental post-petition interest, attorneys' fees, and costs incurred by
20 Give Back.
- 21 • Not later than twenty-four hours after the Trustee deems a potential
22 bidder to be a qualified bidder, the Trustee shall deliver to Give Back, through its counsel

23 _____
24 ⁵ A \$250,000 deposit is simply insufficient and would encourage a party to submit illusory bids for the sole
25 purpose of forcing other parties, including Give Back, to increase their bids. It would be worth it for Hadid
to lose \$250,000 through a straw-buyer to get a credit on the now \$29,000,000 judgment Give Back has
against him personally.

26 ⁶ As noted, Give Back does not want to leave the impression with any bidder that its claim is only
27 \$29,265,211.02 and this is all the Trustee needs to clear in order to transfer title. Give Back simply wants
28 to ensure that all bidders are not misled as to the amount of Give Back's claim, while preserving the
Trustee's right to object to any portion of the claim exceeding \$29,265,211.02.

1 of record Ronald Richards and Daniel A. Lev, via email, to the extent provided by the
2 qualified bidder, the following information: (a) the name and contact information for the
3 qualified bidder, including the members, managers, officers, and/or directors; (b) a valid
4 business address for the qualified bidder; (c) sufficient contact information for the
5 qualified bidder and all of its members, managers, officers, and/or directors to enable Give
6 Back to serve discovery requests on such parties; (d) the source of the name of the good
7 faith deposit paid by the qualified bidder including the originating bank name and name
8 on the account of the depositor; (e) the operative purchase agreement or offer; and (f) a
9 description of all connections between Mohamed Hadid, on the one hand, and the
10 qualified bidder, its members, managers, officers, and/or directors.

11 Finally, Give Back does not believe there is a compelling reason for the
12 Court to depart from its prior ruling limiting the scenarios where Give Back would be
13 forced to pay a 3% buyer's premium. In fact, judicial estoppel should prevent this change
14 to the auctioneer's employment.

15 As the Court will recall, just three weeks ago, the Court approved the
16 Trustee's retention of auctioneers after he assured the Court that, in the event Give Back
17 invoked its statutory right to credit bid, a buyer's premium would only be charged on any
18 cash portion that exceeded the value of its credit bid. For example, if Give Back's
19 secured claim was \$33,000,000, and it acquired the estates' lots by credit bidding all or a
20 portion of its claim, no buyer's premium would be assessed. If, however, Give Back
21 elected to submit a bid in excess of its \$33,000,000 claim, for example, \$35,000,000,
22 then it would be responsible for a 3% buyer's premium on the \$2,000,000 difference.

23 Here is the relevant exchange:

24 THE COURT: Not -- I think you mean the same thing, but you said it
25 differently, so I'll try it again. It's not on your cash -- your credit bid portion, whatever we
26 figure out that number, whether that's a consensual number or whether that's a number
27 that I say, here's what you're allowed to credit bid. That part doesn't under any
28 circumstance get subject to a buyer's premium.

1 MR. RICHARDS: Okay.

2 THE COURT: The only part that we get subject to a buyer's premium is if
3 you're exceeding that and the amount by which you exceed that -- your credit bid, which
4 would be an actual cash bid, that -- you'd end up paying a buyer's premium on the actual
5 cash portion, not on the credit bid portion. Make sense?

6 MR. RICHARDS: Yes.⁷

7 Now, despite the fact that two representatives from the auctioneers and the
8 Trustee were present at the prior hearing, the Trustee claims that his counsel was
9 mistaken, and Give Back will, in fact, be required to pay a buyer's premium on the entire
10 amount of its bid. This Court was clear - no part of the statutory credit bid amount would
11 be subject to a buyer's premium. Counsel's alleged error has nothing to do with the
12 Court's view on the subject, and the Trustee should be judicially estopped from
13 attempting to circumvent the prior ruling through this Motion.

14 The Trustee's rationale for this sudden change is that "it was ultimately
15 determined that it would be fairer to other bidders and provide a more competitive bid
16 process if Give Back were required to pay a Buyer's Premium on its entire successful bid
17 not just the difference." Why is this the case?

18 There certainly is no articulated reason in the Trustee's declaration showing
19 how infringing on Give Back's statutory credit bid rights will make for a more competitive
20 bid process. To date, there has yet to be a single qualified bidder despite more than
21 twelve months (much longer if the pre-petition period is considered) of aggressive
22 marketing by the Debtors and now the Trustee. And other than Mohamed Hadid's
23 unsubstantiated allegations, there is absolutely no evidence that Give Back has engaged
24 in any conduct meant to chill bidding. Yet, that is what the Trustee insinuates when he

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26

27 ⁷ A true and correct copy of the Transcript of February 9, 2022, Proceedings is attached hereto as Exhibit
28 "A" and incorporated herein by reference.

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1 targets Give Back and seeks to impose what is, in essence, a *de facto* 11 U.S.C. § 506(c)
2 surcharge.⁸

3 As a reminder, the right to credit bid under 11 U.S.C. § 363(k) is an
4 important safeguard that ensures against the undervaluation of the secured claim at an
5 asset sale. Credit bidding “allows the secured creditor to bid for its collateral using the
6 debt it is owed to offset the purchase price[.]” which “ensures that, if the bidding at the
7 sale is less than the amount of the claim the collateral secures, the secured creditor can,
8 if it chooses, bid up the price to as high as the amount of its claim.” Quality Props. Asset
9 Mgmt. Co. v. Trump Va. Acquisitions, LLC, 2012 WL 3542527, at *7 n. 13 (W.D. Va. Aug.
10 16, 2012). Forcing Give Back to pay a 3% premium on the entirety of any credit bid, not
11 just the difference between its secured claim and the ultimate purchase price, infringes
12 on Give Back’s statutory right and is meant to keep Give Back from participating in the
13 bidding process.

14 The Trustee certainly could have opted to retain a highly experienced
15 broker, like the Debtors did when they retained Hilton & Hyland. If the Trustee chose that
16 path, then a commission would have been paid to the brokers from the sales proceeds,
17 assuming there were bids above any credit bid submitted by Give Back.⁹ Instead, the
18 Trustee has opted to liquidate the lots through a less conventional auction process.
19 While Give Back defers to the Trustee’s business judgment, it should not be forced to
20 bear the burden of his choice of liquidators by being compelled to pay a 3% buyer’s
21 premium on its credit bid.

22
23
24
25 ⁸ Generally, in order to surcharge expenses pursuant to Section 506(c), the Trustee would have to prove
26 his expenses were reasonable, necessary, and provided a quantifiable benefit to Give Back. Debbie
Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.), 255 F.3d
1061, 1068 (9th Cir. 2001).

27 ⁹ The commission due under the Debtors’ listing agreement with Hilton & Hyland was \$50,000 upon closing
28 of a sale of the two Coldwater lots or a 6% commission upon closing of a sale of all six lots.

1 Give Back, therefore, urges the Court to deny the Motion to the extent it
2 imposes a *de facto* surcharge on Give Back, and limit the buyer's premium due to the
3 auctioneers to any amount over and above Give Back's statutory credit bid amount.

4 II.

5 **CONCLUSION**

6 Based on the foregoing, Give Back respectfully requests that the Motion
7 only be granted in a manner consistent with this Response, and for such other and
8 further relief as the Court deems just and proper under the circumstances.

9 DATED: February 28, 2022

SulmeyerKupetz
A Professional Corporation

10
11
12 By: /s/ Daniel A. Lev

Daniel A. Lev
Attorneys for Give Back, LLC

13
14 DATED: February 28, 2022

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16
17 By: /s/ Ronald Richards

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EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

3 --oOo--

4 In Re:) Case No. 2:21-bk-10335-BB
5 COLDWATER DEVELOPMENT, LLC) Chapter 11
6 Debtor,) Los Angeles, California
7) February 9, 2022
-----X 10:00 A.M.

8 CHAPTER 11 TRUSTEE'S
9 MOTION FOR ORDER:
10 APPROVING RETENTION OF
11 THREESIXTY ASSET ADVISORS,
12 LLC AND WFS, INC. DBA
13 TRANZON ASSET STRATEGIES
14 AS AUCTIONEERS PURSUANT TO
15 11 U.S.C. §327 AND
16 APPROVING AUCTIONEERS'
17 PROPOSED COSTS

18 TRANSCRIPT OF ZOOM PROCEEDINGS
19 BEFORE THE HONORABLE SHERI BLUEBOND
20 UNITED STATES BANKRUPTCY JUDGE

21 APPEARANCES:

22 For Mountain Recreation and Conservation Authority: THEODORE A. COHEN, ESQ.
23 ELLEN MARTIN, ESQ.
24 Sheppard Mullin Richter & Hampton, LLP
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For the Trustee: DAVID SEROR, ESQ.
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Page

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 9, 2022

2 12:49 P.M.

3 --oOo--

4 THE COURT: Okay. #10.00, Coldwater Development,
5 LLC, Chapter 11 Trustee's motion for an order approving
6 retention of Threesixty Asset Advisors. Let's see. Is
7 there anything else in Coldwater? No.

8 All right. So let me take appearances on #10.00.
9 Mr. Cohen, Ted Cohen, would you make an appearance, please?

10 MR. COHEN: Yes, good afternoon, Your Honor. Ted
11 Cohen and also Ellen Martin of Sheppard Mullin on behalf of
12 Mountain Recreation and Conservation Authority.

13 THE COURT: Okay. Thank you. And, all right, so
14 we've got both of you.

15 David Seror, are you here? There you are.

16 MR. SEROR: (No audible response.)

17 THE COURT: You're on mute. Mr. Seror, you're on
18 mute. Still mute. There you go.

19 MR. SEROR: Apologize.

20 THE COURT: Okay.

21 MR. SEROR: David Seror appearing on behalf of
22 Sam Leslie, the Chapter 7 Trustee.

23 THE COURT: All right. Whom I see here somewhere
24 on the screen, too. There you are, Mr. Leslie, thank you.

25 Jessica Bagdanov, make your appearance.

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1 MS. BAGDANOV: Good afternoon, Your Honor.

2 Jessica Bagdanov, BG Law on behalf of Sam Leslie, the
3 Chapter 7 Trustee.

4 THE COURT: Okay. Thank you.

5 Jeff Tanenbaum, would you make your appearance,
6 please?

7 MR. TANENBAUM: Yes. Jeff Tanenbaum, president
8 of Threesixty Asset Advisors.

9 THE COURT: All right. Thank you. All right.
10 Michael Waters, did you want to make an
11 appearance?

12 MR. WATERS: Mike Waters, Tranzon Asset
13 Strategies.

14 THE COURT: Okay. And Ira Kharasch, did you want
15 to make an appearance?

16 MR. KHARASCH: Hi, Your Honor. Ira Kharasch of
17 Pachulski Stang on behalf of interested buyer.

18 THE COURT: Interested buyer. Okay. And Michael
19 Rishe, do you want to make an appearance?

20 MR. RISHE: Good afternoon, Your Honor. Mitchell
21 Rishe, Deputy Attorney General, for the Santa Monica
22 Mountains Conservancy and interested party.

23 THE COURT: All right. Anyone else whose name I
24 didn't call who wants to make an appearance on #10.00?

25 MR. LEV: Yes, Your Honor. Good afternoon.

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1 Daniel Lev, SulmeyerKupetz, on behalf of Give Back, LLC.

2 THE COURT: All right. Thank you.

3 Anyone else?

4 MR. RICHARDS: Good afternoon, Your Honor.

5 Ronald Richards, Law Offices of Ronald Richards &

6 Associates, APC, on behalf of Give Back, LLC.

7 THE COURT: All right. Thank you.

8 Anyone else?

9 (No response.)

10 All right. We'll get the right stack here.

11 Okay. All right. So the tentative says, is the Court

12 correct in understanding that there'll be another motion

13 seeking approval of sale procedures and that this motion is

14 merely to authorize the employment of the auctioneers; what

15 will the compensation formula be if the properties are sold

16 to a credit bidder.

17 So, yeah, I was trying to figure out how many

18 different motions because sometimes the motion to approve

19 the auctioneer is also the sales procedures, but it sounded

20 like maybe there was a separate motion -- I don't know.

21 Help me out here.

22 MR. SEROR: Yes, Your Honor. There's going to be

23 a separate sales procedures --

24 THE COURT: Okay.

25 MR. SEROR: -- bid procedures motion filed.

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1 THE COURT: Okay.

2 MR. SEROR: It's taken us frankly longer than it
3 should have to get to this point with the employment
4 application. We had some issues with the U.S. Trustee's
5 Office that we have to work through. Fortunately, those
6 have been resolved and we're able to proceed now with the
7 application that's before the Court.

8 THE COURT: Okay.

9 MR. SEROR: We will be filing a separate bid
10 procedures motion to lay out what the bid procedures will
11 be.

12 With regard to the second part of the Court's
13 tentative dealing with the credit bid, we do intend to seek
14 either a consent from Give Back or a court hearing
15 concerning the amount of the Give Back claim that can be
16 used to credit bid. We have some issues about some of the
17 attorney's fees, some of the interest charged, et cetera,
18 so we will be working through that and that's why we've not
19 been able to proceed with the credit bid -- I'm sorry --
20 with the bid procedures motion to date, but we will be
21 doing that.

22 THE COURT: Okay. Well, assume we figure out
23 what the number is, how is the compensation calculated --

24 MR. SEROR: Okay.

25 THE COURT: -- if it ends up being --

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1 MR. SEROR: If Give Back bids up to its allowed
2 credit bid, then the auctioneer will be compensated on a
3 fee basis stated in the application and the reimbursement
4 of marketing expenses as listed in the application. No
5 further compensation will be paid.

6 In the event Give Back --

7 THE COURT: Wait, wait. What is that? You just
8 said it will be what's in the application. What does that
9 mean? That's --

10 MR. SEROR: Oh, I'm sorry. The application
11 says -- just one second. The application says that it
12 seeks --

13 THE COURT: Its prior broker, stalking horse --
14 no, no, no. That's something else.

15 MR. SEROR: I believe it's \$30,000 as a fee and
16 \$25,000 in marketing costs. I may have the two numbers
17 reversed but I believe that's what the application seeks.

18 THE COURT: Okay. So if it's -- let's say they
19 bought it all of the credit bid and there was no cash over
20 the credit bid, so they bought it within the credit bid.
21 They only get the \$30,000 retainer, if you will, plus the
22 25K in costs. And there'd be no buyer's premium?

23 MR. SEROR: That's correct.

24 THE COURT: Okay. And then if they -- once we
25 figured out what that number is, what -- call that X, if

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1 they bid -- in order to get the property if they had to bid
2 X plus a couple hundred thousand dollars, but they still
3 had the successful bidder, then how does the fee work?

4 MR. SEROR: Then the buyer's premium provisions
5 of the application would kick in and Give Back would have
6 to pay the full buyer's premium based on the amount that
7 its successful bid exceeds the credit bid amount -- allowed
8 credit bid amount.

9 THE COURT: Only the cash increment of that.
10 They pay the buyer --

11 MR. SEROR: The delta.

12 THE COURT: Yeah, okay, but they don't have to go
13 back to dollar one to pay the buyer's premium. Okay.

14 MR. SEROR: That's correct.

15 THE COURT: Is there also a commission on that or
16 that's -- that's just -- well, the buyer's broker, but
17 that's another quest -- that's --

18 MR. SEROR: There is no separate commission.
19 It's just the buyer's premium as set forth in the
20 application.

21 THE COURT: Okay. All right. Does that answer
22 your question, Mr. Richards or Mr. Lev, as to how that
23 would work?

24 MR. RICHARDS: Just so I'm clear, the buyer's
25 premium would be on whatever the Court ruled would be the

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1 amount above the agreed-upon amount or credit bid, so it
2 wouldn't be on the full, let's say, hypothetical 35
3 million-dollar price; it would just be on whatever the
4 overbid would be?

5 THE COURT: Not -- I think you mean the same
6 thing, but you said it differently, so I'll try it again.

7 It's not on your cash -- your credit bid portion,
8 whatever we figure out that number, whether that's a
9 consensual number or whether that's a number that I say,
10 here's what you're allowed to credit bid. That part
11 doesn't under any circumstance get subject to a buyer's
12 premium.

13 MR. RICHARDS: Okay.

14 THE COURT: The only part that we get subject to
15 a buyer's premium is if you're exceeding that and the
16 amount by which you exceed that -- your credit bid, which
17 would be an actual cash bid, that -- you'd end up paying a
18 buyer's premium on the actual cash portion, not on the
19 credit bid portion. Make sense?

20 MR. RICHARDS: Yes.

21 THE COURT: Okay. Okay. So I don't think we had
22 any other objections other than that, did we? Is there any
23 other issues we --

24 MR. SEROR: I don't believe so, Your Honor.

25 THE COURT: Okay. All right. So subject to that

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1 clarification, which I don't know if you want to help --
2 maybe we ought to put some language in the -- put some
3 language in your order to clarify that. I think I have an
4 order. Let's see. I have --

5 MR. SEROR: We'll submit an order with this
6 language in it --

7 THE COURT: Okay.

8 MR. SEROR: -- to make sure there's no confusion.

9 THE COURT: Good. Excellent. All right. So
10 that will be --

11 MR. RICHARDS: Can that be a consent? Can
12 counsel send that to Mr. Lev and I to approve, please?

13 THE COURT: Right. Yeah, run the form of the
14 order by Messrs. Lev and Richards, okay?

15 MR. SEROR: Be happy to. Your Honor, there's one
16 more thing.

17 THE COURT: Um-hum.

18 MR. SEROR: If I may.

19 THE COURT: Um-hum.

20 MR. SEROR: The Court continued a status
21 conference and a hearing on Give Back's relief from stay
22 motion to March 16th. Frankly, we had thought that we'd be
23 able to have this application approved a couple weeks ago.
24 Again, we had some issues with the Trustee's Office.

25 Is it possible to have the continued hearing on

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1 March 30th instead of March 16th? The extra two weeks
2 would really help us with the marketing.

3 THE COURT: It's fine with me. Is there
4 objection to that or are the parties all on board with
5 that?

6 (No response.)

7 I'm not hearing any objections.

8 Okay. So March 16 we have Coldwater Development.
9 Okay. On March 16 I've got a scheduling case management
10 conference and I've got a motion for relief from stay. So
11 you want to move both of those to March 30?

12 MR. SEROR: Yes, please.

13 THE COURT: Okay. All right. So -- now so the
14 only sort of caveat to this is you're not going to see a
15 notice and you're not going to see anything until
16 March 16 -- the March 16 tentative gets posted, at which
17 point you'll see the notation I'm making right now. Today
18 is the 9th. At hearing held this date court continued
19 hearing to March 30, 2022 at request of Trustee off
20 calendar for February 9 -- no, for February 6 -- March
21 16th. March 16. Okay. So now let's take this. Okay.
22 Let me see. Also Coldwater. Okay. Okay. All right. So
23 I have made the appropriate entries on that.

24 MR. SEROR: Thank you very much, Your Honor.

25 THE COURT: Thank you.

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1 (End at 12:59 p.m.)

2 * * * * *

3 I certify that the foregoing is a correct
4 transcript from the electronic sound recording of the
5 proceedings in the above-entitled matter.

6
7 *Ruth Ann Hager*

8 _____ Date: 2/11/2022

9 RUTH ANN HAGER, C.E.T.**D-641

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **GIVE BACK LLC'S RESPONSE TO CHAPTER 11 TRUSTEE'S MOTION TO (I) APPROVE AUCTION AND BID PROCEDURES REGARDING THE SALE OF REAL PROPERTY; AND (II) SET SCHEDULING FOR A MOTION TO APPROVE THE SALE OF REAL PROPERTY** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) February 28, 2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached ECF List

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) February 28, 2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via FedEx Overnight

The Honorable Sheri Bluebond
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1534
Los Angeles, CA 90012

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 28, 2022

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

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